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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-819**

13 **DAVID ALLEN SMITH**
2596 Witty Lane
14 Columbia Falls, MT 59912

A C C U S A T I O N

15 **Registered Nurse License No. 712485**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about September 14, 2007, the Board of Registered Nursing issued Registered
25 Nurse License Number 712485 to David Allen Smith (Respondent). The Registered Nurse
26 License expired on March 31, 2011, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

....

COSTS

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Out-of-State Discipline Against Respondent's Washington Nursing License)**

3 8. Respondent has subjected his license to disciplinary action under section 2761,
4 subdivision (a)(4) of the Code in that his out-of-state registered nurse license was disciplined by
5 the Washington State Department of Health. The circumstances are as follows:

6 9. Respondent was licensed as a registered nurse by the Washington State Department
7 of Health on July 18, 1996.

8 10. On or about October 29, 2007, the Washington State Department of Health, Nursing
9 Care Quality Assurance Commission (Washington Commission) filed a Statement of Allegations
10 and Summary of Evidence against Respondent, in docket number 07-10-A-1060RN. The
11 Statement of Allegations alleged that on or about December 24, 2006, while employed as a nurse
12 at a Washington hospital, Respondent dispensed a dose of Dilaudid (hydromorphone) for a
13 patient without an order to do so from a healthcare provider with prescriptive authority.
14 Respondent misplaced the Dilaudid and did not waste it properly, and he did not account for its
15 wastage in hospital records. Respondent also administered a dose of an antinauseant/antiemetic
16 to a patient before receiving an order to do so from a healthcare provider with prescriptive
17 authority. Respondent admitted the allegations.

18 11. The Washington Commission determined that the alleged facts would constitute
19 misconduct in violation of Revised Code of Washington (RCW) section 18.130.180
20 (unprofessional conduct); section 18.79.260 (Registered nurse – Activities allowed – Delegation
21 of tasks); section 18.79.280 (Medication, tests, treatments allowed); and Washington
22 Administrative Code (WAC) section 246-840-710 (Violations of standards on nursing conduct or
23 practice).

24 12. As a result of the Statement of Allegations and Summary of Evidence, Respondent
25 entered into a Stipulation to Informal Disposition with the Washington Commission, effective
26 December 4, 2007. Respondent agreed to successfully complete the terms and conditions of the
27 informal disposition, which required, among other things, that he provide evidence of successful
28 completion of eight hours of coursework in the area of medication administration, and eight hours

1 of coursework in the legal aspects of nursing. Upon receiving proof of completion of the above
2 coursework, on or about May 15, 2008, the Washington Commission closed Respondent's file.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Out-of-State Discipline Against Respondent's Washington Nursing License)**

5 13. Respondent has subjected his license to disciplinary action under section 2761,
6 subdivision (a)(4) of the Code in that his out-of-state registered nurse license was disciplined by
7 the Washington State Department of Health. The circumstances are as follows:

8 14. Respondent was licensed as a registered nurse by the Washington State Department
9 of Health on July 18, 1996.

10 15. On or about August 29, 2011, the Washington State Department of Health, Nursing
11 Care Quality Assurance Commission (Washington Commission) filed a Statement of Charges
12 against Respondent in case number M2011-598. The Statement of Charges alleged that while
13 employed as a registered nurse at a Washington hospital, the hospital conducted an audit of
14 Respondent's medication withdrawals for a 30-day period between September 21, 2009 and
15 October 20, 2009. The audit revealed the following discrepancies: On September 22, 2009,
16 Respondent withdrew and administered morphine in excess of the physician's orders; on
17 September 26, 2009, Respondent withdrew Lorazepam for a patient that was not ordered by the
18 physician; on September 26, 2009, Respondent withdrew Dilaudid for a patient with no physician
19 orders, and failed to properly account for its wastage; on September 29-30, 2009, Respondent
20 exceeded the physician's order for Dilaudid for a patient; and on October 5, 2009, Respondent
21 withdrew and administered Dilaudid to a patient without physician orders.

22 16. The Washington Commission determined that the alleged facts constituted
23 misconduct in violation of RCW section 18.130.180 (unprofessional conduct); and Washington
24 Administrative Code (WAC) section 246-840-710 (Violations of standards on nursing conduct or
25 practice).

26 17. As a result of the Statement of Charges, Respondent entered into a Stipulated
27 Findings of Facts, Conclusions of Law and Agreed Order with the Washington Commission,
28 effective February 25, 2012. Respondent stipulated to the facts alleged in the Statement of

1 Charges. The Washington Commission found that Respondent committed unprofessional
2 conduct in violation of RCW section 18.130.180, and WAC section 246-840-710. The Agreed
3 Order suspended Respondent's license to practice. Respondent cannot petition for reinstatement
4 of his license for a period of two years, and prior to reinstatement, he must provide satisfactory
5 evidence of being clean and sober for at least 24 consecutive months.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Out-of-State Discipline Against Respondent's Montana Nursing License)**

8 18. Respondent has subjected his license to disciplinary action under section 2761,
9 subdivision (a)(4) of the Code in that his out-of-state registered nurse license was disciplined by
10 the State of Montana Department of Labor and Industry, Board of Nursing. The circumstances
11 are as follows:

12 19. On or about May 5, 2012, the State of Montana Department of Labor and Industry,
13 Board of Nursing (Montana Board) issued a Summary Suspension Order that Respondent's
14 nursing license be suspended for an indefinite period of time pending further investigative and
15 disciplinary proceedings.

16 20. On or about May 15, 2012, in case number 2012-NUR-LIC-355, the Montana Board
17 filed a Notice of Summary Suspension, Notice of Proposed Board Action and Opportunity for
18 Hearing against Respondent. The notice alleged that Respondent violated Montana Code
19 Annotated (MCA) section 37-1-316(7), in that Respondent's nursing license was discipline by
20 another state; and MCA section 37-1-316(18), in that Respondent's conduct did not meet the
21 generally accepted standards of practice. The basis for the notice was that Respondent's nursing
22 license in Washington State was the subject of a disciplinary action, as described in paragraph 17,
23 above. Respondent was directed to file a request for hearing within 20 days of service of the
24 Notice.

25 21. On or about June 13, 2012, the Montana Board entered a default against Respondent
26 after he failed to file a request for hearing. The Final Order of Default, dated July 18, 2012,
27 ordered Respondent's license be suspended indefinitely. Respondent cannot petition for
28 reinstatement of his license, or reapply for licensure in Montana without providing proof he


1 enrolled in, signed a contract with, and remained complaint with the terms of the contract and the
2 requirements of the Montana Nurses' Assistance Program for a continuous period of at least one
3 year.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Registered Nursing issue a decision:

- 7 1. Revoking or suspending Registered Nurse License Number 712485, issued to David
8 Allen Smith;
- 9 2. Ordering David Allen Smith to pay the Board of Registered Nursing the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.
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14

15 DATED: MARCH 26, 2013


16 LOUISE R. BAILEY, M.ED., RN
17 Executive Officer
18 Board of Registered Nursing
19 Department of Consumer Affairs
20 State of California
21 Complainant

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